

1 Mike Panser
Neugonzenbach 8
2 9601 Lutisburg-Station
Switzerland
Mailing Address for Service
3 PO Box 26476, Tamarac, FL 33320

4 **UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF FLORIDA**

5
6 Mike Panser
a German Citizen, an Individual
7 Plaintiff,
8 v.
9 Timothy Antonition,
an individual as CEO of Space Coast
Credit Union
10 and
Space Coast Credit Union
11 a Florida Corporation
12 and,
13 North American Bancard, LLC, a parent company
for Electronic Processing Exchange (EPX)
14 A Michigan Corporation
15 Defendants,

COMPLAINT FOR

1. BREACH OF CONTRACT
2. BREACH OF FIDUCIARY DUTY
3. UNLAWFUL AND DECEPTIVE PRACTICES
4. NEGLIGENT SUPERVISION
5. FALSE ADVERTISING UNDER THE LANHAM ACT
6. UNJUST ENRICHMENT

16
17 **COMPLAINT**

18 I, Mike Panser, a German Citizen and Florida resident, ("Plaintiff,") do hereby
19 file this Statement of Claim against Timothy Antonitian as the President and CEO of

1 Space Coast Credit Union ("SCCU"), SCCU, a Florida Corporation and North
2 American Bancard Holdings, LLC, parent Company to Electronic Payment Exchange
(EPX) (collectively the "Defendant") and hereby state as follows:

3 **1. PROCEDURAL HISTORY**

4 This case was initiated on December 26, 2019 by Plaintiff as a state matter (Case No.
CACE19026460). Judge Carlos A Rodriguez ordered a case management
5 conference on the matter which went unresolved. A second case management
6 conference was Ordered and the judge ordered a dismissal without prejudice on the
7 grounds of lack of service on the Defendant NAB within 120 days as proscribed
under Florida law.

8 **II. THE PARTIES**

9 **The Plaintiff, Mike Panser**

10 Plaintiff Mike Panser is a South Florida resident and operates a small freight
forwarding business (Now Move USA}, with a registered address of PO Box 26476
11 Tamarac, FL 33320.

12 **The Defendant, Timothy Antonition**

The Defendant, Timothy Antonition is the President and CEO of SCCU.

13 As President and CEO of SCCU, Defendant, Timothy Antonition has both
oversight and decision making authority over SCCU's employees including Managers
14 and other subordinate staff. Defendant, Timothy Antonition also is Executive Vice
15 President of Retail Operations at SCCU

16 **The Defendant, Space Coast Credit Union ("SCCU")**

Space Coast Credit Union ("SCCU") is an NCUA-insured credit union
17 headquartered at 8045 N Wickham Road Melbourne, FL 32940-7920

18 SCCU began operations in 1951 and as of December 31, 2017, the credit
19 union had assets of \$4.03 billion serving more than 400,000 members.

1 SCCU holds itself as being the third largest credit union in Florida, serving 29
2 counties, with 59 branch locations that span Florida's east coast.

The Defendant North American Bancard Holdings, LLC

3 The Defendant North American Bancard Holdings, LLC (NAB), is a payments
4 technology company founded on 1992 which Corporate Office is located at 1201 N
5 Market Street, Suite 701 Wilmington, DE 19801 and is headquartered at 250
6 Stephenson Hwy, Troy, MI 48083

7 NAB offers solutions for credit, debit, EBT, check conversion and guarantee, e-
8 commerce, gift & loyalty cards, and more.

9 In 2014, Defendant NAB became a true, end-to-end payment acceptance solution
10 after acquiring payment processor Electronic Payment Exchange (EPX), which is a
11 subsidiary Company to Defendant NAB.

Electronic Processing Exchange (EPX)

12 EPX, is not named as a Defendant in this case but may be a necessary and
13 interested party in this case.

14 EPX is a subsidiary to the Defendant NAB, international merchant
15 account provider that serves a wide range of business types.

16 EPX is headquartered at 1201 N. Market Street, Suite 701, Wilmington,
17 Delaware 19801

18 EPX is branded as "a North American Bancard Company." This means that EPX
19 is a processing platform owned by North American Bancard, and that North American
20 Bancard representatives board their merchants to the EPX platform.

III. JURISDICTION AND VENUE

21 Jurisdiction and Venue are proper in this case because Plaintiff resides in
22 Broward County Florida and the cause of action occurred in the State of Florida.

IV. STATEMENT OF FACTS

1 Plaintiff is a registered account with the Defendant SCCU (SCCU Member ID
2 (746541).

3 Plaintiff entered into an agreement with the Defendant, North American Bancard
4 (hereinafter "NAB") which Company used EPX to run Plaintiff's customer credit card
to process automatic withdrawals from Plaintiff's account with the Defendant SCCU.

5 On June 20 2019 Plaintiff sent a request to NAB via facsimile, to withdraw the
6 ACH authorization for any future ACH withdrawals from Plaintiff's SCCU account
7 from the date of the request and onward (a copy is hereto attached as an Exhibit
Despite the Plaintiff's action in withdrawing the ACH authorization form, NAB, EPX
continued to withdraw money from Plaintiff's account.

8 On August 21 2019, Plaintiff filed an ACH return with the its financial
9 institution, the Defendant SCCU for unauthorized EPX transactions occurring on:
10 08/20 – 08/19 – 08/15 – 08/14 – 08/09 -08/04 – 08/07 – 08/05, (hereto attached as an
Exhibit)

11 On August 22, 2019 Plaintiff filed an ACH return with the Defendant SCCU for
12 unauthorized EPX transactions occurring on 08/02 – 08/01 – 07/29 (hereto attached
as an Exhibit)

13 On August 23, 2019 Plaintiff filed an ACH return with the Defendant SCCU for
14 unauthorized EPX transaction on 07/05 – 07/03 – 07/02 – 07/01- 06/26 (hereto
attached as an Exhibit)

15 Managers acting for and on behalf of SCCU made several assurances to Plaintiff
16 over the phone that they would have reversed the unauthorized withdrawals but have
17 failed to do so; furthermore, the Defendant SCCU have failed to return Plaintiff's
many calls in an attempt to resolve the issue.

18 When Plaintiff finally was able to gain a phone conversation on the issue, the
19 Manager for SCCU, informed Plaintiff that he was too late in submitting the ACH

1 return requests and that SCCU had no intentions of honoring the assurances made to
2 him by SCCU.

3 Plaintiff explained to the SCCU Manager that there was in fact no time frame
4 involved for requesting the ACH returns as Plaintiff had withdrawn his ACH
5 authorization from NAB and as such EPX had no grounds to continue to withdraw
6 money from Plaintiffs account, and further the Defendant SCCU had absolutely no
7 authority whatsoever to allow EPX to withdraw said funds in dispute.

8 Plaintiff asserts that only NAB had the authorization to withdraw funds which
9 authorization Plaintiff had cancelled pursuant to the June 20th 2019 correspondence
10 Plaintiff had sent to NAB.

11 In Defendant SCCU's attempt to address Plaintiff's concerns, the Manager sent
12 Plaintiff a copy of a contract endorsed by North American Bancard, which does not
13 include EPX in any of its provisions.

14 Furthermore, in an attempt to resolve the issue, the Defendant SCCU contacted
15 NAB without informing Plaintiff and disclosed Plaintiff's personal information, albeit
16 without Plaintiff's informed consent

17 Defendant SCCU returned \$155 to Plaintiff representing the refund for the
18 unauthorized withdrawal that occurred on 8/20/2019, however the remaining
19 unauthorized transactions to be returned to Plaintiff's account remain outstanding.

20 Plaintiff sent a correspondence to the Defendant Timothy Antonition seeking a
21 resolution to the matter, to no avail.

22 Plaintiff has attempted to resolve the matter with both the Defendant SCCU and
23 the Defendant NAB with no success.

24 Further to the above, Defendant SCCU's continues to generate periodic
25 accounting statements for Plaintiff stating that Plaintiff has no issues with his account
26 when in fact, Plaintiff's account is missing in excess of \$25,000USD,

1 Plaintiff states that because the Defendant SCCU's malfeasance for allowing the
 2 Defendant NAB to withdraw funds from Plaintiff's account in excess of \$25,000USD,
 without Plaintiff's consent, Plaintiff has suffered severe economic and financial losses.

3 At present Plaintiff has been unable to effectively continue transacting business
 4 and is in the brink of losing his place of residence overseas.

5 Plaintiff has been struggling to pay his bills because of the Defendants' conduct
 and has further had negative items listed by NAB on Plaintiff's credit rating, which
 6 has significantly lowered Plaintiff's credit score to the point that Plaintiff is unable to
 transact business.

7 Plaintiff therefore brings this action against the Defendants alleging four (4)
 8 causes of action:

9 **FIRST CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 **(As Against Defendant SCCU)**

12 In the State of Florida, Credit Unions are governed by **Chap. 657** of the Florida
 13 Statutes.

14 A credit union is a cooperative, nonprofit association, organized under this chapter,
 for the purposes of encouraging thrift among its members, creating sources of credit
 15 at fair and reasonable rates of interest, and providing an opportunity for its members
 to use and control their resources on a democratic basis in order to improve their
 economic and social condition. **657.003 Purposes.**

16 **657.0265 Liability of credit union directors, supervisory committee members,
 or audit committee members.—**

17 (1) A director of a credit union organized under state or federal law, or a member
 18 of the supervisory or audit committee of such credit union, is not personally liable for
 monetary damages to the credit union, its members, or any other persons for any
 19

1 statement, vote, decision, or failure to act, regarding the management or policy of the
2 credit union, unless:

3 (a) The director or the member of the supervisory or audit committee breached or
4 failed to perform her or his duties as a director or as a member of the supervisory or
5 audit committee; and

6 (b) The breach or failure to perform by the director or the member of the
7 supervisory or audit committee constitutes:

8 3. Recklessness or an act or omission which was committed in bad faith or with
9 malicious purpose or in a manner exhibiting wanton and willful disregard of human
10 rights, safety, or property.

11 (2) For the purposes of this section, the term “recklessness” means the acting, or
12 omission to act, in conscious disregard of a risk that is:

13 (a) Known, or so obvious that it should have been known, to the director or
14 member of the supervisory or audit committee; and

15 (b) So great as to make it highly probable that harm would follow from such action
16 or omission.

17 Because determining when a fiduciary duty exists is often a fact-intensive
18 inquiry, conclusory allegations that one party placed “trust and confidence” in another
19 are typically insufficient to plead a fiduciary relationship. For example, in *Raymond, James & Associates, Inc. v. Zumstorchen Investment, Ltd.*, 488 So. 2d 843, 846 (Fla. 2d DCA 1986), the Second District Court of Appeal affirmed a trial court’s dismissal of a breach of fiduciary duty claim because the plaintiff failed to allege any ultimate facts indicating that a fiduciary relationship existed. A contractual relationship between the parties was not required to form a fiduciary relationship. *Masztal v. The City of Miami*, 971 So. 2d 803, 808 (Fla. 3d DCA 2008); in this case, a putative class

1 action plaintiffs and their attorneys were held to owe an implied fiduciary duty to
2 potential members of a class of property owners prior to certification of a class. The
3 named plaintiffs brought a class action against the City of Miami, challenging a special
4 assessment to fund fire rescue services and seeking a refund to all who had paid the
5 assessment. The court stated that a bank and its customers generally deal at arm's
6 length, but that a fiduciary relationship may arise under special circumstances where
7 "the bank knows or has reason to know that the customer is placing trust and
8 confidence in the bank and is relying on the bank so to counsel and inform him." *Id.* at
9 40-41, quoting *Susan Fixel, Inc. v. Rosenthal & Rosenthal, Inc.*, 842 So. 2d 204, 208
10 (Fla. 3d D.C.A. 2003). Those special circumstances, according to the court, include
11 instances where the lender "takes on extra services for a customer, receives any greater
12 economic benefit than from a typical transaction, or exercises extensive control." *Id.*
13 Subsequently, that person must (expressly or impliedly) agree to serve the interests of
14 the first party. see *Taylor Woodrow Homes Fla., Inc. v. 4/46-A Corp.*, 850 So. 2d 536
15 (Fla. 5th DCA 2003), Both legal and equitable remedies are available for a breach of
16 fiduciary duty. The equitable remedies include an accounting, imposition of a
17 constructive trust, disgorgement of profits or commissions, and injunctive relief. See
18 *Williams v. Stanford*, 977 So. 2d 722, 730 (Fla. 1st D.C.A. 2008) ("A constructive trust
19 is an equitable remedy available in cases dealing with breaches of fiduciary duty; such
an instrument restores property to its rightful owner and prevents unjust
enrichment"); *Cassedy v. Alland Investments Corp.*, 982 So. 2d 719, 720 (Fla. 1st
D.C.A. 2008) (dissolved corporation and its representatives had fiduciary relationship
with investor such that they were required to render final accounting); *Heina v La
Chucua Paso Fino Horse Farm, Inc.*, 752 So. 2d 630, 636 (Fla. 5th D.C.A. 1999)
(corporate president's wrongful appropriation of corporation's assets warranted an
accounting and constructive trust); *c.f. Young v. Field*, 548 So. 2d 784, 786 (Fla. 4th
D.C.A. 1989) (broker who breaches fiduciary duty forfeits his commission and has to

1 account for any profits); *Vargas v. Vargas*, 771 So. 2d 594, 595-96 (Fla. 3d D.C.A.
2 2000) (temporary injunction was warranted in sisters' action against brothers for
3 breach of fiduciary duty and conversion in order to freeze various safe deposit boxes
4 containing bearer shares to offshore companies and \$4.4 million in bank accounts).

5 Legal remedies for breach of fiduciary duty include tort actions for both
6 compensatory and punitive damages. *See First National Bank*, 789 So. 2d at 412-16
7 (affirming award of compensatory damages for breach of fiduciary duty
8 claim); *Mortellite v. American Tower, L.P.*, 819 So. 2d 928, 934 (Fla. 2d D.C.A. 2002)
9 (minority shareholder was entitled to punitive damages for majority shareholder's
10 breach of fiduciary duty, irrespective of any compensatory damages). These equitable
11 and legal remedies mentioned above may result in damages greater than traditional
12 breach of contract damages. The standard damages remedy for breach of contract is
13 either the recovery of lost profits or recovery of expenditures. *See, e.g., Beefy Trail,*
14 *Inc. v. Beefy King International, Inc.*, 267 So. 2d 853, 856 (Fla. 4th D.C.A. 1972).

11 **SECOND CAUSE OF ACTION**
12 **UNLAWFUL ACTS AND PRACTICE**
13 **As Against Defendant SCCU**

14 Plaintiff re-alleges and incorporates by this reference all of the allegations of the
15 proceeding paragraphs as though fully set forth herein.

16 As for the third cause of action, Plaintiff states that Defendant SCCU is liable
17 to Plaintiff for predicated unlawful acts and practices when it violated ACH
18 Procedures applicable to banks and credit unions such as the Defendant SCCU. The
19 ACH network electronically exchanges funds and related information among
individuals, businesses, financial institutions, and government entities. Payment
instructions originated through the ACH network are either to credit or to debit a
deposit account. The ACH operator provides a central distribution and settlement

1 point for transmitting funds electronically between an originating depository
 2 financial institution (ODFI) and a receiving depository financial institution (RDFI.)
 3 ACH operator. In the U.S, there are two ACH Operators that receive batches of ACH
 4 entries from the ODFI (central clearing facilities): The Federal Reserve and The
 Clearing House.)

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or
 6 deceptive acts or practices in the conduct of any trade or commerce are hereby declared
 7 unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due
 8 consideration and great weight shall be given to the interpretations of the Federal
 9 Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade
 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.

Civil penalty.--Except as provided in s. 501.2077, any person, firm, corporation,
 11 association, or entity, or any agent or employee of the foregoing, who is willfully
 12 using, or has willfully used, a method, act, or practice declared unlawful under
 13 s. 501.204, or who is willfully violating any of the rules of the department adopted
 14 under this part, is liable for a civil penalty of not more than \$10,000 for each such
 15 violation. Willful violations occur when the person knew or should have known that
 16 his or her conduct was unfair or deceptive or prohibited by rule. This civil penalty may
 17 be recovered in any action brought under this part by the enforcing authority; or the
 18 enforcing authority may terminate any investigation or action upon agreement by the
 19 person, firm, corporation, association, or entity, or the agent or employee of the
 foregoing, to pay a stipulated civil penalty. The department or the court may waive
 any such civil penalty if the person, firm, corporation, association, or entity, or the
 agent or employee of the foregoing, has previously made full restitution or

1 reimbursement or has paid actual damages to the consumers or governmental entities
 2 who have been injured by the unlawful act or practice or rule violation. If civil
 3 penalties are assessed in any litigation, the enforcing authority is entitled to reasonable
 4 attorney's fees and costs. A civil penalty so collected shall accrue to the state and shall
 be deposited as received into the General Revenue Fund unallocated.

5 The facts are undisputed that that the Defendant SCCU failed to follow
 6 ACH Procedures when it allowed EPX to continuously withdraw funds from
 7 Plaintiff's account, despite Plaintiff sending a request to NAB via facsimile on June
 8 20, 2019, to withdraw the ACH authorization for any future ACH withdrawals from
 9 Plaintiff's SCCU account from the date of the request and onward (a copy is hereto
 attached as Exhibit A). Plaintiff informed the managers of the Defendant SCCU that
 it violated ACH Procedures in the manner described however; the Defendant SCCU's
 managers even admitted to violating ACH Procedures, to *wit*:

- 10 **1. Unauthorized debits can be disputed beyond the return time frame.** ACH
 11 rules state that unauthorized debits to corporate accounts must be returned by
 12 midnight of the second banking day following the effective date of the original
 13 entry. However, an ODFI warrants that all ACH transactions it originates are
 14 authorized. If someone sends an ACH debit you have not authorized to your
 15 business or corporate account, the ODFI has breached its warranty, and you can
 dispute the transaction even after the return deadline has passed. But sooner is
 always better.

16 <https://www.nacha.org/resources/ach-network-volume-and-value-2017>

17 In light of the above, Plaintiff requests that the Court award Plaintiff the
 18 statutory damages associated with Defendant SCCU's unlawful acts and practices in
 19

1 breaching ACH Procedures and allowing EPX, a third party to continuously withdraw
2 funds from Plaintiff's account.

THIRD CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH A
CONTRACTUAL OR BUSINESS RELATIONSHIP
As Against Defendants SCCU and NAB

5 Plaintiff re-alleges and incorporates by this reference all of the allegations of the
6 proceeding paragraphs as though fully set forth herein.

7 As for the third cause of action, Plaintiff states that Defendants SCCU and NAB
8 are liable to Plaintiff for Tortious Interference with a Contractual or Business
9 Relationship. A claim for tortious interference with a contractual or business
10 relationship consists of four elements: 1) the existence of a business relationship
11 between the plaintiff and a third person, not necessarily evidenced by an enforceable
12 contract, under which the plaintiff has legal rights, 2) the defendant's knowledge of
13 the relationship, 3) an intentional and unjustified interference with the relationship
14 by the defendant which induces or otherwise causes the third person not to perform,
15 and 4) damage to the plaintiff resulting from the third person's failure to perform. See
16 *Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 315 (Fla. 4th
17 DCA 2001).

18 Plaintiff asserts that it is heavily engaged in shipping goods for customers to
19 destinations all over the world. Plaintiff has been utilizing the services of Defendant
SCCU, for the purpose of serving as a payment processor for Plaintiff's customers as
third parties to the agreement between Plaintiff and Defendant SCCU. Defendant
SCCU, knew or should have known of Plaintiff's business activities as a freight
shipping Company, through the information which Plaintiff provided to Defendant
on the merchant application form and agreement between the Parties. Defendant
SCCU created an intentional and unjustified interference with the Plaintiff's

1 relationship with its customers by closing Plaintiff's account suddenly and without
2 notice and allowing EPX to continuously withdraw funds from Plaintiff's account
3 without failing to investigate and/or rectify the matter, causing Plaintiff's business to
4 be affected and causing other third party customers not to contract with Plaintiff's
Company.

Because of Defendant's tortious interference with the contractual and business
5 relationship with Plaintiff's customers, Plaintiff seeks damages in the amount of
6 \$20.000USD

FOURTH CAUSE OF ACTION

NEGLIGENT SUPERVISION

As Against Defendant Timothy Antonition

As Against the Defendant Timothy Antonition

9 Plaintiff states that Florida jurisprudence allows for the Plaintiff to assert the tort
10 of Negligent Supervision which Plaintiff asserts against the Defendant Timothy
Antonition, as follows:

- 11 1. The defendant employer becomes aware, or should have become aware, of
12 problems with an employee that indicates his unfitness;
- 13 2. The defendant employer owes a duty to plaintiff to protect the plaintiff from a
14 particular injury or damage;
- 15 3. The defendant employer breaches its duty by failing to take further action,
16 such as investigation, discharge, or reassignment;
- 17 4. Defendant's breach was the proximate cause of injury or damage to plaintiff;
18 and
- 19 5. Plaintiff suffered damages as a result of the breach

1 1. Plaintiff states that Defendant Timothy Antonition became aware or should have
2 become aware of the problems which employee and SCCU Manager Kim had
3 created by her decision to disclosure Plaintiff's confidential information
4 concerning his account and making a deal with the Defendant NAB concerning the
5 disbursement of the amount of \$25,000, all without Plaintiff's knowledge and or
6 consent, and well after Plaintiff had sent a request to NAB via facsimile, to
withdraw the ACH authorization for any future ACH withdrawals from Plaintiff's
SCCU account from the date of the request and onward.

7 2. Plaintiff states that the that Plaintiff has an account with the Defendant SCCU and
8 expected a level of confidentiality with the Defendant SCCU. Plaintiff states that
9 by extension, he entrusted the Defendant Timothy Antonition to hire and supervise
10 employees and their conduct concerning customer accounts either directly or
11 through some chain of command or delegated authority. This duty of
12 confidentiality entrusted by the Plaintiff of the Defendant SCCU and its CEO the
13 Defendant Timothy Antonition to supervise its Managers also included for
14 Managers and staff not to breach this confidentiality through disclosure of client
account information to third parties outside the contract with Plaintiff and the
Defendant SCCU and its CEO Defendant Timothy Antonition to supervise, albeit
without Plaintiff's consent.

15 Plaintiff states that the duty of confidentiality owed to him by Defendant SCCU,
16 and by extension the Defendant Timothy Antonition to supervise its Managers was
17 breached when SCCU Manager Kim concerning her unauthorized conversations
18 with the Defendant NAB concerning the matter and through Defendant Timothy
19 Antonition's failing to take further action, such as investigation, discharge, or
reassignment of said Manager.

1 3. Plaintiff asserts that Defendant Timothy Antonition's breach in failing to both
2 supervise and rectify the matter after its occurrence was a proximate cause of
3 Plaintiff's losses in excess of \$25,000.

4 4. Plaintiff has suffered actual damages as a result of Defendant's breach.

5 **FIFTH CAUSES OF ACTION**

6 **1. Violation under the Lanham Act 41 U.S.C. § 1125**

7 **As Against Defendant North American Bancard LLC also referred as North**
8 **American Bancard Holdings LLC**

9 The false-advertising section of the Lanham Act (commonly known as
10 Section 43(a)) provides as follows:

11 Any person who, on or in connection with any goods or services, or
12 any container for goods, uses in commerce any word, term, name, symbol, or
13 device, or any combination thereof, or any false designation of origin, false or
14 misleading description of fact, or false or misleading representation of fact,
15 which—

- 16 1. is likely to cause confusion, or to cause mistake, or to deceive as to the
17 affiliation, connection, or association of such person with another
18 person, or as to the origin, sponsorship, or approval of his or her goods,
19 services, or commercial activities by another person, or
 2. in commercial advertising or promotion, misrepresents the nature,
characteristics, qualities, or geographic origin of his or her or another
person's goods, services, or commercial activities,
- shall be liable in a civil action by any person who believes that he or
she is or is likely to be damaged by such act.

41 U.S.C. § 1125(a)(1).

The Lanham Act Elements

To prevail on a false-advertising claim under the Lanham Act, a plaintiff must satisfy the following elements: (1) a false or misleading statement of fact; that is (2) used in a commercial advertisement or promotion; that (3) deceives or is likely to deceive in a material way; (4) in interstate commerce; and (5) has caused or is likely to cause competitive or commercial injury to the plaintiff.

(I) False or Misleading Statement of Fact

As for the first element,

Two types of advertising claims are actionable under the Lanham Act: (1) statements that are literally false; and (2) statements that are literally true, but likely to mislead, confuse, or deceive.

Specific claims of false objective facts are, of course, the easiest to prove. Statements of opinion or general claims of superiority—often called puffery—are not typically actionable under the Lanham Act. But a plaintiff might recover on a superiority claim if, for example, the challenged advertisement makes a direct comparison to a competitor's product.

A plaintiff can recover under the Lanham Act for misleading statements that are literally true, but must show that the advertisement has deceived or has a tendency to deceive.

Plaintiff states that the Defendant's holding itself out as North American Bancard Holdings LLC on the World Wide Web when it outright refuses to receive service of process either in Delaware (its registered office) or in Troy, Michigan (its Headquarters) on the basis that the Company is "North American Bancard" and not North American Bancard Holdings LLC, concerns both a False and Misleading Statement of Fact and constitutes statements that are "literally

1 false.” Plaintiff states that if North American Bancard Holdings LLC cannot
2 be served as North American Bancard Holdings LLC then it should not
3 advertise itself as such as it confuses both the Public and deceives the
potential Plaintiff, process server and ultimately the tax payer.

4 **(ii) Commercial Advertising or Promotion**

5 As for the second element, the definition of commercial advertising or
6 promotion under the Lanham Act is relatively broad and, in addition to
7 obvious advertisements, can include internet advertising, labels, and even
some sales presentations to groups of customers or potential customers. This
element is typically a factually specific inquiry.

8 Plaintiff states that the name North American Bancard Holdings LLC is
9 marketed, advertised and promoted throughout the continental United States
on the World Wide Web.

10 **(iii) Deceives or is Likely to Deceive in a Material Way**

11 As for the third element, Plaintiff states that Defendant’s false
12 advertising deceived Plaintiff in a material way as Plaintiff was unable to
13 serve the Defendant North American Bancard both in Delaware and Michigan
on related case No (CACE19026460) because Plaintiff had named North
14 American Bancard Holdings on the face of the Complaint as a Defendant and
15 when the retained process server for the Complaint endeavored to serve the
Defendant North American Bancard as the name advertised on the web North
16 American Bancard Holdings, the company’s agents avoided or otherwise
17 evaded service of Process by claiming that their company was not North
American Bancard Holdings as was listed on the Complaint and which is
18 advertised on the World Wide Web. Plaintiff states that because of this false
and misleading advertising predicted by the Defendant NAB that Plaintiff
19 was unable to provide proof of service to the Court within the 120 day limit

as proscribed by the Florida Rules of service and subsequently Plaintiff's State Action was dismissed without prejudice at the State level. Plaintiff asserts this federal action and this cause of action for false advertising against the Defendant NAB for this basis as their delay tactics through false statements on the web caused a significant delay in rectifying this case at the state level.

VI. PRAYER FOR RELIEF AND PLEA FOR DAMAGES

WHEREFORE I, Mike Panser, do hereby file this Complaint against Defendant Timothy Antonition, an individual and Defendants Space Coast Credit Union, and North American Bancard Holdings LLC and EPX, asserting four causes of action, and further asks the Court to:

1. Enter Judgment in favor of the Plaintiff in the amount of 25,000USD representing the amount which Defendant SCCU allowed to be withdrawn by the Defendant NAB, without Plaintiff's consent.
2. Award Plaintiff damages for Breach of Fiduciary Duty in the amount of \$25,000USD representing damages caused by the Defendant SCCU in communicating with the Defendant NAB without the Plaintiff's consent as customer of the Defendant SCCU.
3. Award Plaintiff the statutory damages for the unlawful acts and practices predicated by Defendant.
4. Award Plaintiff the damages for the tortious interference of contractual or business relationship predicated by Defendant SCCU, as Plaintiff's continuing business operations has been adversely affected to the tune of \$100,000USD
5. Order that the Defendant Timothy Antonition, CEO of SCCU be held personally liable for the acts of the managers of SCCU which have

1 significantly delayed the resolution of this matter and that damages be
2 ordered against him for \$50,000

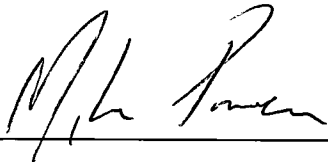
3 6. Award Plaintiff litigation expenses, court costs and any other costs which
4 this Court deems proper and will allow, given the facts of this case.

5 7. Order NAB to remove the wrongfully stated negative item from
6 Plaintiff's credit.

7 8. In light of the foregoing, Plaintiff requests the Court to award Plaintiff
8 \$200,000USD as the total amount of damages.

9 9. Plaintiff further hereby requests a jury trial in the adjudication of this
10 matter.

11 Respectfully Submitted,

12 

13 Mike Panser

14 Plaintiff, Pro Se

15 Dated May 1, 2023

16 **CERTIFICATE OF SERVICE**

17 I Mike Panser certify that I have on this the 1 day of May 2023 served the
18 Defendants below a copy of this Complaint via registered mail to the following
19 addresses:

Timothy Antonition
8045 N Wickham Road
Melbourne, FL 32940-7920

1 Space Coast Credit Union ("SCCU")

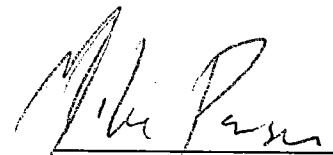
2 8045 N Wickham Road

3 Melbourne, FL 32940-7920

4 North American Bancard Holdings, LLC (NAB),

5 1201 N Market Street, Suite 701

6 Wilmington, DE 19801

7
8
9 

10 Mike Panser

11 Plaintiff, Pro Se

12 PO Box 26476, Tamarac, FL 33320.

FROM:

MIKE PANSER
PO BOX 26476
TAMARAC FL
33320

TO:

US DISTRICT
SOUTHERN DISTRICT
299 E BROWARD
BLVD STE 100
FT LAUDERDALE
33301

UNITED STATES
POSTAL SERVICE



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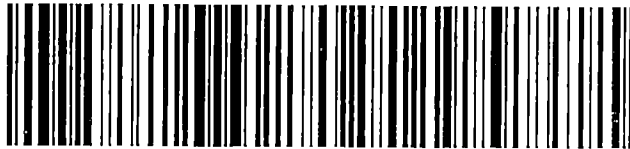
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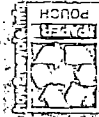


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